

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: **DEC 23 1993**

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated in the State of [REDACTED] on [REDACTED].

The purposes for which the corporation was formed include being exclusively organized to disseminate educational resources on a wide variety of issues of interest to the public. In furtherance of such goals, the corporation will research, solicit, publish and sell reproductions of artwork addressing themes of peace and social justice.

[REDACTED] researches, develops produces and distributes educational resources. The corporation accomplishes its goals through the printing of two catalogs which are mailed five times per year. Such catalogs are primarily made available to a variety of groups, stores and co-ops. The entity sells merchandise at a discount to clientele which includes nonprofit organizations. Some of the merchandise sold is designed specifically for a client.

Your sources of financial support will consist of sales and contributions. The financial information submitted with your application informs that [REDACTED]% of your income is from the sale of merchandise. The expenses of your corporation consist of salaries artists fees, printing fees, and other operating costs associated with your mail order catalog operation.

The corporation has several different compensation arrangements with artist depending upon the item produced and the type of artist. Some artists are paid a fee. Others such as poster and card artists are paid a [REDACTED]% royalty based on the list price of the item beginning with the first unit sold. Some artists and publishers have also donated their work.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Revenue Ruling 60-351, 1960-2 C.B. 169, provides that a corporation which published a foreign language magazine containing fiction, poetry, book reviews and other articles available to the general public through regular paid subscriptions does not qualify for exemption. Since, the sole activity of the corporation was the publishing and public sale of a magazine, it was not exempt under section 501(c)(3) of the Internal Revenue Code.

Like the organization described above, your organization's sole activity is the publication of the catalogs for the sale and distribution of merchandise. Your organization operates a mail order company and provides the merchandise to the general public.

Revenue Ruling 72-369, 1972-2 C.B. 245, provides that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. The ruling emphasizes that an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. Further, providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit.

Like the organization described above, [REDACTED] provides merchandise for sale on a regular basis to a variety of institutions. The mere fact, that the corporation is not organized for profit, does not qualify it for exemption. To satisfy the operational test your resources must be devoted to purposes that qualify as exclusively charitable or educational within the meaning of section 501(c)(3) of the Code and the applicable regulations.

The operation of a trade or business on a regular basis does not qualify as a charitable or educational activity. The mail order catalog operation of your organization is its primary activity which is being carried on as trade or business. Your principal source of income is derived from the sale of merchandise through the catalogs.

Revenue Ruling 77-4, 1977-1 C.B. 141, provides that an organization whose only activities are preparing and publishing a newspaper of local, national and international news articles within an ethnic emphasis, soliciting advertising and selling subscriptions to that newspaper in a manner indistinguishable from ordinary commercial publishing practices, is not operated exclusively for charitable and educational purposes. The organization operated with a paid staff. The income was derived from the sale of advertising and the sale of subscriptions to the general public. Its primary expenses were wages and printing costs. The organization operated for several years and had not realized a profit from its operations. The organization did not qualify for exemption under 501(c)(3) of the Internal Revenue Code.

Like the organization described in the ruling above, your activities can not be distinguished from those of a commercial mail order business. [REDACTED] operates with a paid staff and the majority of the expenses are for salaries and other related expenditure to operate your mail catalog business.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,


District Director

Enclosure: Publication 892